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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,774

01/08/2007

Stanley E. Moore

63551A

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109

7590

04/06/2009

The Dow Chemical Company  
Intellectual Property Section  
P.O. Box 1967  
Midland, MI 48641-1967

EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

04/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,774	<b>Applicant(s)</b> MOORE ET AL.	
	<b>Examiner</b> John Cooney	<b>Art Unit</b> 1796	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060626</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingold et al.(6,831,110).

Ingold et al. discloses preparations rigid polyurethane foams prepared from (1.) isocyanate materials (2.) polyols, including polyols prepared from toluene diamine and other polyols having hydroxyl functionalities and OH numbers as claimed, (3.) blowing agents including water in amounts as claimed and other blowing agents, as desired, which include the hydrofluorocarbons as defined by applicants' claims, and (4.) catalyst, surfactants, and other additives (see abstract, column 4 line 23 – column 15 line 28).

Ingold et al. differs from applicants claims in that it does not particularly require the oxyethylene contents for their toluene diamine initiated polyols as defined by applicants' claims. However, Ingold et al.'s own teaching (column 5 lines 33-63) recognizes ethylene oxide as one of the preferred alkoxyating agent in the making of its toluene diamine initiated polyols. Accordingly, it is held that it would have been obvious to have varied the content of ethylene oxide employed in the making of the toluene diamine initiated polyols of Ingold et al. from within Ingold et al. own teaching for the purpose of varying degrees of rigidity/flexibility in products obtained in order to arrive at

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the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Additionally, as to variations of amounts of the respective components used in the making of the preparations of the instant concern, it has long been held that where the general conditions of the claims are disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Reese* 129 USPQ 402 . Further, a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of the same properties. *Titanium Metals v Banner* 227 USPQ 773. **(see also MPEP 2144.05 I)** Similarly, it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272,205 USPQ 215 (CCPA 1980).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cho et al. and Schilling et al. are cited for their disclosures of relevant preparations involving toluene diamine initiated polyols in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Cooney/  
Primary Examiner, Art Unit 1796